

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JUNE 18, 1999

IN RE:)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	DOCKET NO.
TARIFF FILING TO OFFER LATA WIDE)	98-00634
AREA PLUS SERVICE)	
)	

PRE-HEARING OFFICER'S INITIAL ORDER GRANTING IN PART AND
DENYING IN PART BELLSOUTH'S MOTION TO COMPEL DISCOVERY
FROM COMPETING INTERVENOR

This matter came before the Pre-Hearing Officer pursuant to the *Motion to Compel Discovery from Competing Intervenor* filed by BellSouth Telecommunications, Inc. ("BellSouth") on March 15, 1999. The competing intervenor is AT&T Communications of the South Central States, Inc. (hereafter "AT&T"). For some period of time after the motion to compel was filed, the Pre-Hearing Officer was advised that the parties may possibly resolve this discovery dispute. When no resolution was reached, the parties turned to the Pre-Hearing Officer to rule on the motion to compel. AT&T filed its *Response to BellSouth's Motion to Compel* on May 6, 1999. BellSouth filed its *Reply Memorandum in Support of Motion to Compel* on May 11, 1999. BellSouth has advised the Pre-Hearing Officer that resolving the motion to compel will not impact the scheduling of the hearing that is currently planned for June 29, 1999. After reviewing the original discovery requests and responses, BellSouth's *Motion to Compel*, AT&T's *Response to BellSouth's Motion to Compel*, and BellSouth's *Reply Memorandum in*

Support of Motion to Compel, the Pre-Hearing Officer makes the following rulings relative to the four areas in which BellSouth seeks relief via its motion to compel.

Data Request Nos. 1 and 2

BellSouth seeks to obtain data regarding AT&T's intraLATA markets in other states, including whether ILECs in other states offer flat-rated LATA-wide calling plans against which AT&T must compete. AT&T claims that such data is not relevant to this proceeding. AT&T further states that the burden to obtain data about the calling plans of other ILECs is substantially the same for BellSouth as it is for AT&T, since the only method available to gather the data is by searching the applicable ILEC tariffs. BellSouth responds that given the size and sophistication of a company like AT&T, someone inside AT&T should have this type of information, and further, that AT&T's response simply fails the "straight face test".

In essence, AT&T alleges that BellSouth's proposed LATA-Wide plan is anti-competitive and would "effectively foreclose competition" in the intraLATA toll market in Tennessee. Although market conditions vary from state-to-state or region-to-region, this comparative data could certainly aid in the Authority's examination of BellSouth's proposed tariff. The market information relative to other states in which AT&T competes against similar flat-rated intra-LATA calling plans, while not dispositive of the issue, is nevertheless relevant to this proceeding.

As for the applicability of T.R.C.P Rule 33.03, the Pre-Hearing Officer finds that the individual tariffs of incumbent local providers over the nine state region can not be considered "business records" of AT&T for purposes of this rule, and therefore, Rule

33.03 does not apply in the instant case. Further, “BellSouth does not expect AT&T to research the tariffs of every incumbent local exchange company operating in every state in order to respond to these data requests. To the extent that AT&T is aware of information responsive to this request, however, AT&T should provide such information in response to these requests.” (BellSouth’s *Motion to Compel Discovery*, p. 3). Therefore, AT&T should produce this information to the extent that it has such in its possession, and BellSouth’s motion to compel relative to data requests Nos. 1 and 2 is granted.

Data Request No. 6(a-d)

In Data Request No. 6, BellSouth requests that AT&T identify, relative to BellSouth’s proposed LATA-Wide tariff: (a) the essential elements, (b) the rates for such essential elements, (c) the competitive elements, and (d) the total long-run incremental costs of such competitive elements. With respect to (a) and (b), AT&T claims that it has fully responded by stating that the primary essential elements are BellSouth’s exchange access services and any unbundled elements that must be purchased from BellSouth to provide intraLATA services at access rates set forth in BellSouth’s Tennessee access tariffs and at UNE rates to be determined by the Permanent Prices docket. For (c) and (d), AT&T claims that the burden to identify and determine the cost of competitive elements is BellSouth’s, and that AT&T does not have access to the company-specific data it needs to make these calculations and determinations. In its response to BellSouth’s motion to compel, AT&T does identify cost accounts that “[t]he TRA has identified [as] avoided costs”, stating further that this may or may not be a comprehensive

list of competitive elements for the proposed LATA-Wide service. BellSouth maintains that AT&T must provide information about how AT&T believes the cost floor should be calculated, including the essential and competitive elements of the service as well as applicable prices and long-run incremental costs.

AT&T should identify the essential and competitive elements that are necessary in providing BellSouth's proposed LATA-Wide service. Then BellSouth will be able to either contest whether certain elements should be included or excluded in the cost of this service or attempt to calculate the cost of service based upon the agreed-upon elements. Thus, BellSouth's motion to compel discovery on specific essential and competitive elements of the proposed LATA-Wide service, subpart (a), (b) and (c) of data request No. 6, is granted. However, AT&T does not have sufficient BellSouth-specific data to compute the long-run incremental costs of elements; accordingly, BellSouth's motion relative to subpart (d) of data request No. 6 is denied.

Data Request Nos. 7, 8, and 9

According to BellSouth, these data requests ask AT&T to explain its position on the price floor (No. 7) and stand alone cost (Nos. 8 and 9) relative to the proposed LATA-Wide service. AT&T maintains that it is BellSouth's burden to provide sufficient evidence that its proposed LATA-Wide tariff complies with cost requirements, and that such evidence has not yet been produced by BellSouth. AT&T further contends that it does not have access to the data necessary to ascertain whether BellSouth has met the cost requirements set forth in the statutes. BellSouth claims that AT&T does not need access to BellSouth's internal data in order to answer these requests, as BellSouth is merely

asking AT&T to explain whether AT&T contends that the proposed LATA-Wide service exceeds the price ceiling (No. 8), and to explain how AT&T contends the price ceiling should be calculated (No. 9).

It is impractical to require AT&T to calculate BellSouth's costs of providing the proposed LATA-Wide service as the data requests seem to indicate. For instance, data requests Nos. 7 and 8 ask AT&T to "explain in detail", "identify all facts", and "produce all documents" supporting any AT&T contention that the proposed LATA-Wide service either does not adhere to the price floor or exceeds the stand alone cost of the service. Data request No. 9 asks AT&T to "identify what AT&T contends such 'stand alone cost' to be, and produce all documents supporting this contention." It is BellSouth's responsibility to prove the costs of the proposed service, and it seems reasonable that AT&T may not be in a position to respond to these requests without access to internal BellSouth data. Therefore, BellSouth's motion regarding data requests Nos. 7, 8, and 9 is denied.

Data Request Nos. 10, 11, 12, 13, 15, and 16

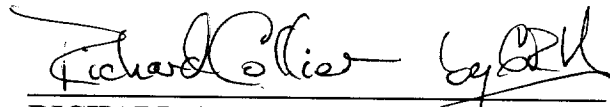
In these data requests, BellSouth has asked AT&T to provide its position on issues regarding anti-competitive, unfair, unjust, and/or discriminatory practices with respect to the proposed LATA-Wide service. For each request, AT&T responded in part that "AT&T is unable to provide additional information in support of its contention until it has had an opportunity to review the information BellSouth provides in discovery in this proceeding." BellSouth complains that AT&T has not responded through discovery and

has attempted to "supplement" its original responses through testimony of AT&T witness King.

AT&T did indicate or at least implied that it would respond to these data requests after it had an opportunity to review BellSouth's discovery responses. As AT&T has made no complaint about the adequacy of BellSouth's discovery responses, AT&T should now respond to these requests. BellSouth's motion to compel discovery on data requests Nos. 10, 11, 12, 13, 15, and 16 is granted.


IT IS THEREFORE ORDERED THAT:

1. The Pre-Hearing Officer grants BellSouth's motion to compel as to BellSouth's Data Requests Nos. 1, 2, 6(a), 6(b), 6(c), 10, 11, 12, 13, 15, and 16.
2. The Pre-Hearing Officer denies BellSouth's motion to compel as to BellSouth's Data Requests Nos. 6(d), 7, 8, and 9.
3. Any party aggrieved by this Initial Order may file a Petition for Reconsideration with the Pre-Hearing Officer, pursuant to Tenn. Code Ann. § 4-5-317.
4. Any petitions for reconsideration will be considered at the Pre-Hearing Conference scheduled for Friday, June 25, 1999 at 1:30 PM.



**RICHARD COLLIER, ACTING AS
PRE-HEARING OFFICER**

ATTEST:



K. David Waddell, Executive Secretary

Date: 6/18/99